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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/505,214	10/26/2004	Martin Vigoureux	Q82801	2390
23373	7590	10/03/2007	EXAMINER	
SUGHRUE MION, PLLC 2100 PENNSYLVANIA AVENUE, N.W. SUITE 800 WASHINGTON, DC 20037			JAGANNATHAN, MELANIE	
			ART UNIT	PAPER NUMBER
			2616	
			MAIL DATE	DELIVERY MODE
			10/03/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Office Action Summary**

Application No.

10/505,214

Applicant(s)

VIGOUREUX ET AL.

Examiner

Melanie Jagannathan

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 20 August 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 August 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

**DETAILED ACTION*****Double Patenting***

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 1-8 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-10 of copending Application No. 11/012,206. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims of both the instant application and co-pending application claim substantially the same subject matter regarding candidate spectral paths and path setup requests..

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

***Specification***

3. The disclosure is objected to because it contains an embedded hyperlink and/or other form of browser-executable code. Applicant is required to delete the embedded hyperlink and/or other form of browser-executable code. See MPEP § 608.01.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. Claims 1-8 are rejected under 35 U.S.C. 102(e) as being anticipated by Doverspike et al. US 6,982,951.

Regarding claim 1, the claimed method of determining a spectral route in an optical telecommunications network (T) between a starting node (ON1) and a destination node (ON6) of the network comprising using a conventional routing method to determine at least one candidate spatial route (Route 1, Route 2) connecting the starting node (ON1) to the destination node (ON6) is disclosed by path restoration

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method in an optical network for a path between a source node and a destination node. See column 2, lines 7-31. The claimed each candidate spatial route consisting of a sequence of route segments, each segment connecting two nodes of the network directly and being adapted to support a plurality of wavelengths each constituting a spectral route segment is disclosed by the path is selected based on wavelength characteristics distributed by the nodes on the path. The claimed collecting values of parameters characterizing all the spectral route segments along each candidate spatial route and using an optimization method to process all the collected parameter values to select a spectral route and the spatial route that supports it by selecting the wavelength to be used, or the wavelengths to be used successively, to connect the starting node to the destination node is disclosed by RSVP path and reserve messages including link weight information are passed through each node from source and destination and the restoration path is selected using the weight information. See column 7, lines 47-67, column 8, lines 1-3.

Regarding claims 2-3, the claimed collecting parameter values characterizing all route segments along each candidate spatial route, it consists in sending a route set-up request message from the starting node (ON1) to the destination node (ON6) and collecting parameter values in that message as it passes through each node along the candidate spatial route is disclosed by RSVP path and reserve messages including link weight information are passed through each node from source and destination and the restoration path is selected using the weight information. See column 7, lines 47-67, column 8, lines 1-3.

Regarding claims 4-6, the claimed the parameters characterizing all the spectral route segments along each candidate spatial route take account of connection capacity, transparency and quality of service constraints is disclosed by the message contains link weights.

Regarding claim 7, the claimed optical network node comprising management means for receiving a route set-up request message on a predetermined spatial route passing through the node and adding to the content of the message parameter values concerning spectral routes supported by the spatial route segment immediately upstream and/or downstream of the node on the spatial route, together with parameter values concerning the interfaces of the node is disclosed by RSVP path and reserve messages including link weight information are passed through each node from source and destination and the restoration path is selected using the weight information. See column 7, lines 47-67, column 8, lines 1-3. The link weight information is updated at each node as it passes from node to node. The claimed forwarding the message modified in this way to another node situated on the spatial route segment immediately downstream of the node and designated by routing information contained in the message is disclosed by the RSVP messages are passed from node to node and the link information is updated at each node.

Regarding claim 8, the claimed optical network node, the node being characterized in that it comprises management means for receiving at least one message containing parameter values collected along a candidate spatial route connecting a starting node to the node and using an optimization method to process the

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parameter values collected in this way along at least the candidate spatial route to select a spectral route by selecting the wavelength to be used, or the wavelengths to be used successively, to connect the starting node to the node is disclosed by RSVP path and reserve messages including link weight information are passed through each node from source and destination and the restoration path is selected using the weight information. See column 7, lines 47-67, column 8, lines 1-3. The link weight information is updated at each node as it passes from node to node. The claimed forwarding the message modified in this way to another node situated on the spatial route segment immediately downstream of the node and designated by routing information contained in the message is disclosed by the RSVP messages are passed from node to node and the link information is updated at each node.

### ***Conclusion***

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.


- Hess et al. US 7,096,176.
- Dantu et al. US 7,167,443.
- Drwiega et al. US 6,842,463.
- Aukia et al. US 6,594,268.
- Kodialam et al. US 6,584,071.
- Chaudhuri et al. US 7,031,299.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melanie Jagannathan whose telephone number is 571-272-3163. The examiner can normally be reached on Monday-Friday from 8:00 a.m.-5:00 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wing Chan can be reached on 571-272-7493. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
Melanie Jagannathan  
Patent Examiner  
Art Unit 2616  
September 27, 2007